Editor's note: Reconsideration granted; decision sustained -- See Roselyn Isaac (On Reconsideration), 53 IBLA 306 (March 25, 1981)

ROSELYN ISAAC

IBLA 75-437 Decided December 23, 1975

Appeal from a decision of the Fairbanks District Office, Bureau of Land Management, rejecting appellant's Native allotment application.

Affirmed.

1. Alaska: Native Allotments

   A decision rejecting a Native allotment application which alleges occupancy only as of a date after a State selection application for the land has been filed will be upheld and a request for a hearing on appeal denied where appellant has refused after repeated opportunities to provide factual allegations of qualifying occupancy and the statement of reasons on appeal fails to assert any facts which would tend to establish qualifying occupancy.

2. Administrative Authority: Estoppel--Alaska: Native Allotments

   A Native allotment applicant is charged with notice of the official land records of the Bureau of Land Management. No estoppel will result from a delay in the rejection of a Native allotment where the basis of the decision is that the land was segregated by a State selection application prior to commencement of occupancy, the delay was not unreasonable, the State selection was a matter of public record, and no misrepresentations were made to the applicant.

APPEARANCES: Alaska Legal Services Corporation, Fairbanks, Alaska, by E. John Athens, Jr., Esq., Barbara Evans, Esq., and Carmen L. Massey, Esq., for appellant. Avrum M. Gross, Attorney General, by James N. Reeves, Assistant Attorney General, for the State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought by Roselyn Isaac from the decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated March 20, 1975, rejecting her Native allotment application (F-13040). 1/ The subject application was filed for a certain tract of land in Alaska on July 13, 1970, alleging use and occupancy of the land on a seasonal basis from November 1, 1961, to the time of filing. The same tract of land is the subject of an Alaska State selection application filed with the BLM on May 25, 1961.

The BLM sent the appellant a letter dated May 28, 1974, warning her that her application, as filed, was barred by the state selection in the absence of evidence of use and occupancy by the appellant prior to May 25, 1961. Appellant was given 30 days in which to submit further evidence. No response from appellant was forthcoming. Appellant was given an additional 60 days in which to submit such evidence by letter of September 12, 1974, but again there was no response. Accordingly, appellant's Native allotment application was rejected.

Counsel for appellant argues in the statement of reasons for appeal that there is an issue of fact with respect to the time period during which appellant occupied the land and requests an evidentiary hearing on this matter under 43 CFR 4.415. Further, it is argued on behalf of appellant that her rights were prejudiced by the delay in adjudication of her application until after the statute authorizing Native allotment applications had been repealed.

1/ An adverse party served with a copy of the statement of reasons is entitled under the regulations to 30 days in which to file an answer. 43 CFR 4.414. The State of Alaska has requested that the record in this case be returned to the Alaska State Office in order that its representatives may have a chance to review the case and prepare a statement of reasons in support of the decision of the Fairbanks District Office. In view of the result reached in this case affirming the decision below, we feel no useful purpose would be served by delaying this case and putting the State to the expense of preparing a brief.

The Act of May 17, 1906, ch. 2469, 34 Stat. 197, as amended, ch. 891, 70 Stat. 954, 2/ authorized the Secretary of the Interior to allot not more than 160 acres of land in Alaska to any Indian, Aleut, or Eskimo who is both a resident and a Native of Alaska and who is 21 years old or the head of a family. The statute clearly states that the land to be allotted must be "vacant, unappropriated, and unreserved." 70 Stat. 954. In addition, the statute mandates that the applicant must make satisfactory proof to the Secretary of the Interior of "substantially continuous use and occupancy of the land for a period of five years." 70 Stat. 954.

The application for Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. A state selection application filed pursuant to the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 48 U.S.C. note prec. § 21 (1970), has the effect of segregating the land from all appropriations based on settlement and location when the application is filed with the BLM. Helen F. Smith, 15 IBLA 301 (1974); 43 CFR 2627.4(b).

Neither the appellant nor her attorney, despite repeated opportunities, have made any factual allegation tending to establish occupancy prior to the time of the state selection. The only statement advanced on behalf of the appellant apart from the application is the conclusory statement of the attorney in the statement of reasons that there is a "factual dispute." This conclusion of counsel is not justified by anything appearing in the record.

[1] A hearing may be appropriate before rejection of an application where there is an issue of fact and it is necessary to rely on facts which are disputed by applicant in order to justify rejection. Natalia Wassilliey, 17 IBLA 348 (1974); see Bythel J. Compton, 18 IBLA 148 (1974); Clayton E. Racca, 72 I.D. 239 (1965). However, no hearing is necessary where the reason for rejecting the application is disclosed by the land office records and the appellant has not made any allegations, either below or on appeal, which tend to contradict the facts that necessitate rejection of the application, despite repeated opportunities to present such evidence. Ed Wuilliez, 12 IBLA 265 (1973); see Carl A. Bracale, Jr., A-31149 (April 20, 1970); cf. Natalia Wassilliey, supra.

2/ This statute was repealed by § 18(a) of the Act of December 18, 1971, 43 U.S.C. § 1617 (Supp. III, 1973), subject to applications pending before the Department on December 18, 1971.

[2] To the extent that the assertion that the Government was "remiss" in not adjudicating appellant's application earlier (more particularly, between the time of filing--July 13, 1970--and the statutory date cutting off Native allotment applications--December 18, 1971) may be construed as an argument that the Government is estopped to reject appellant's application, this contention must be rejected. The BLM made no misrepresentations to the appellant. Further, the pending state selection was a matter of public record as a part of the official BLM records and appellant is charged with notice of these records. Helen F. Smith, supra at 302. The duty is on the Native allotment applicant to check the land records of the BLM to determine if the land is open before commencing occupancy. Helen F. Smith, supra at 302.

A party claiming estoppel must have a reasonable right to rely upon the conduct or representation upon which it is based. 31 CJS Estoppel § 71a. fn. 74 (1964). Appellant is charged with notice of the land records with respect to state selections and therefore any reliance on her part was not reasonable.

At any rate, the delay on the part of the Government in the rejection of appellant's application could not operate to the prejudice of the rights of the State of Alaska arising from its previously-filed state selection application. Helen F. Smith, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Martin Ritvo
Administrative Judge